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MEDIA TALKING POINTS:

Thank you. I will now take any questions.

IF ASKED:

Is this an attack on freedom of the press? Why are journalists being targeted if you are looking for the source of the leak?

- No. The AFP supports press freedom. The media plays an important role in today's society in keeping the Australian community informed.
- The AFP targets criminal activity – in these cases we received referrals from other agencies that identified material which they assessed as classified or an official secret, and which had been published.

Search warrant processes

- All AFP search warrants are authorised by a magistrate or an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed.
- Under the terms of the search warrant, AFP investigators can seize material (electronic and hard copy) that relates to these allegations.

What legislation do these warrants relate to?

- The search warrants relate to offences under the secrecy offences in Part 6 and 7 of the Crimes Act 1914 (Cth)
- The AFP was unable to rely on the revised secrecy offences inserted into the Criminal Code Act 1995 by the National Security Legislation (Espionage and Foreign Interference) Act 2018, as the alleged conduct occurred before the new legislation commenced.

What about issues around having access to journalist's sources on a range of matters/using information gained from search warrants for other means.

- The AFP will not seek to identify people who have contacted the organisations or journalists on matters that are not directly related to these allegations. Additionally, such information will not be collated as intelligence to inform other investigations at a later date.
- Investigators discarded a wide range of information and communication that was not directly relevant to these allegations.



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IF ASKED: about the "add, copy, delete or alter other data in the computer or communication in transit" part of the warrants.

- This line in the warrant is in recognition of how technology operates these days.
- When interacting with a computer there is always unintended changes made during the identification and collection of digital information

Are you likely to conduct more warrants on media organisations?

- I don't want to speculate on what activities investigators may still have to undertake.
- IF PUSHED: We have no immediate plans for more overt search warrants.

Did your officers go through the journalist's underwear draw?

- Search warrants have to be thorough when they are executed.
- We understand they can be intrusive for people concerned, and my officers were sensitive to people's privacy and concerns, where possible.
- For example, during Tuesday's warrant in Kingston, only female officers conducted searches of Ms Smethurst's bedroom and bathroom.

Why did you execute warrants in the one week?

- There is no ideal time to execute warrants such as these when it involves journalists or media outlets.
- All investigations have varying timeframes and the timing is based on having sufficient suspicion that a criminal offence has been committed and evidentiary material is likely to be found at a certain location.
- We needed to ensure all investigators and digital forensics members required on these warrants were available at the same time. Because of this, it was determined that executing the warrants on consecutive days was the most effective use of their time.

If this is an issue for national security why didn't you act earlier?

- Investigators have been working on these matters since July 2017 and April 2018, respectively.
- Every investigation is different and search warrants are not always the first investigative activity undertaken.
- All investigations have varying timeframes and the timing is based on having sufficient suspicion that a criminal offence has been committed and evidentiary material is likely to be found at a certain location.

Why did you have to be at the locations for such a long period of time?



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- Search warrants take time. There is one window under the provisions of a search warrant in which to collect all relevant evidence.
- A search warrant involves the discovery and collection of relevant evidence in an exhaustive, comprehensive and organised manner
- My officers were at each location for no-longer than was required and conducted themselves professionally and respectfully.

Can you rule out that journalists might be the subject of charges?

- I'm not going to speculate on what future actions we may, or may not undertake as part of these active investigations.

IF PUSHED: The reality is we have an investigation into the publication and disclosure of documents that are highly classified.

Targeting of whistle blowers: Public Interest Disclosure Act 2013

- There are lawful mechanisms which members of the community can access under the *Public Interest Disclosure Act 2013* – to facilitate disclosure and investigation of wrongdoing and maladministration in the Commonwealth public sector.
- With respect to these investigations we allege the people involved did not use these mechanisms.

Did you notify the Minister as per the AFP guidelines on politically sensitive investigations? Was the Government aware of the search warrants?

- The AFP notified the Minister's Office that it was investigating these matters as per the AFP Guideline of Politically Sensitive Investigations.
- In each instance, an advisor to the Minister for Home Affairs was made aware the AFP had received a referral and was commencing an investigation.
- The AFP did not provide regular updates on operational activities, or that it had obtained search warrants.
- The Minister for Home Affairs was not notified prior to the execution of the warrants.

Who approved the search warrants?

- These search warrants were authorised by an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed.



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- IF PUSHED ABOUT QUALIFICATIONS OF MARTIN KANE: I am not going to discuss the merits of the individual who authorised these warrants. This is highly inappropriate and unnecessary.
- Investigators contact the closest court that has an appropriate person available to authorise a warrant.

What classification were the documents?

- Top Secret and Secret and this means they are classified as being "Exceptionally grave damage to the national interest, organisations or individuals."

Would this be considered an over-reaction given the AFP didn't respond to the same degree to the AWU leak?

- Each investigation is different.
- In the AWU matter, we did not have the grounds to obtain search warrants.

IF ASKED OP WOOLF (News Corp/Smethurst):

Has anyone been charged in relation to this investigation?

- No one has been charged or arrested as a result of this activity.

Has the AFP previously approached the journalist or the News Corp seeking their cooperation?

- Consistent with long-standing practice, the AFP does not comment on activities it may or may not undertake during an investigation.
- As this investigation remains ongoing, it is not appropriate to comment further.

Why didn't you search the journalist's office in the press gallery?

- During the investigation, we obtained information that led us to believe evidence may be located at the Kingston residence.
- I reject any assertion we executed that search warrant to intimidate or "send a message."
- A search warrant is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed.

How many AFP officers are involved?

- Seven AFP members were involved in Tuesday's (4 June) activity in the ACT suburb of Kingston. This includes two digital forensics members.

Were the officers armed and why?

- Yes, all AFP officers are required to be armed under Commissioner's Order 3 when executing their duties. During this search warrant, AFP members



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behaved appropriately and in accordance with their responsibilities and legal obligations.

- It should not be inferred that the fact police are armed means any threat was posed at the warrant location.
- AFP members carry accoutrements because they are expected to act immediately to protect the community if they encounter any threat while on duty. This is the same as any other police in Australia.

IF ASKED Op KLASIES - ABC:

If asked: Has the AFP previously approached the ABC or its journalists seeking their cooperation?

- The AFP has been in discussion with the ABC and its legal representatives regarding this matter since 13 September 2018.
- Consistent with long-standing practice, the AFP does not comment on activities it may or may not undertake during an investigation.
- As this investigation remains ongoing, it is not appropriate to comment further.

If asked: How many AFP officers are/were involved?

- There are five officers involved, which includes two digital forensics members.

If asked: Are/Were the officers armed and why?

- Yes, all AFP officers are required to wear full accoutrements (be armed) under Commissioner's Order 3 when executing their duties. During this search warrant, AFP members behaved appropriately and in accordance with their responsibilities and legal obligations.
- It should not be inferred that being armed means there was any threat posed at the warrant location.
- AFP members carry accoutrements because they are expected to act immediately to protect the community (and themselves) if they encounter any threat while on duty. This is the same as any other state police in Australia.

If asked: Is this an attack on freedom of the press?

- No. The AFP supports press freedom. The media plays an important role in today's society in keeping the Australian community informed.



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- All AFP search warrants are authorised by a magistrate or an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed.

If asked: Why are journalists being targeted if you are looking for the source of the leak?

- The search warrant today is being conducted in relation to the Crimes Act 1914 and relates to the publishing of classified material. This is an extremely serious allegation and has the potential to undermine Australia's national security.
- Under the terms of the search warrant, AFP investigators can seize material (electronic and hard copy) that relates specifically to these allegations.
- The AFP will not seek to identify people who have contacted the organisation (ABC) or journalists involved on matters that are not directly related to these allegations. Additionally, such information will not be collected as intelligence to inform other investigations at a later date.

If asked: Has anyone been charged in relation to this (ABC) investigation?

- Yes. On Wednesday 5 September 2018, a 54-year-old male was arrested and charged by AFP officers on a Commonwealth warrant for the alleged theft of Commonwealth property.
- The man was arrested at Sydney International Airport and appeared before a Sydney court in September 2018.
- He has subsequently appeared before the ACT Magistrates Court (on 7 March 2019 and 30 May 2019) to answer charges of Theft (Cth) and unauthorised disclosure of classified material.
- As this investigation remains ongoing and matters are before the court, it is not appropriate for the AFP to comment further. **This matter has now been committed to the Supreme Court and the National Security Information Act has been invoked.**

OTHER MATTERS relating to these investigations:

Did AFP change its media statement today?

- Yes, to ensure the correct information was in the public domain.
- The two search warrants were under two sections of the Crimes Act. The initial version of the media release made reference to only one section of the Act, which was applicable to only one of the warrants.



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Ben Fordham

- I'm aware of Mr Fordham's comments, but we haven't received a referral regarding the story he broadcast.

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